

In the High Court of Judicature at Madras

Reserved on : 08.10.2015

Pronounced on : 13.10.2015

Coram:

The Hon'ble Mr.Justice S.MANIKUMAR

and

The Hon'ble Mr.Justice M.VENUGOPAL

C.M.A. No.1233 of 2015 and

M.P.Nos.1 to 3 of 2015

The Divisional Manager,
M/s United India Insurance Co., Ltd.,
No.46, Katpadi Salai, Vellore. ...Appellant/2nd Respondent

Vs

1.Deepa

2.Minor Vijayarathna (2nd Respondent Minor
Rep.by its 1st Respondent/
mother)

3.Dhakshnamoorthy

4.Ranganathan Mudaliyar

5.Manonmani

..Respondents/Petitioners
and Respondents 1, 3 & 4

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 to set aside the decree and judgment passed in M.C.O.P.No.2 of 2014 dated 03.06.2014 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge), Thiruvannamalai

For Appellant : Mr.J.Chandran

For Respondent

Nos.1 & 2 : Mr.B.Jawahar
Nos.4 & 5 : Mr.N.Manokaran
No.3 : No appearance

J U D G M E N T

[Judgment of the Court was made by
M.VENUGOPAL, J.]

The Appellant/Insurance Company has filed the present Civil Miscellaneous Appeal as against the Award dated 03.06.2014 in M.C.O.P.No.02 of 2014 passed by the Motor Accident Claims Tribunal (Special Subordinate Judge), Thiruvannamalai.

2. The Motor Accident Claims Tribunal (Special Sub Court), Thiruvannamalai while passing the Impugned Award in M.C.O.P.No.2 of 2014 dated 03.06.2014 (on a Claim Petition filed by the Respondents/Claimants) had resultantly held that the Respondents are entitled to the total compensation of Rs.43,87,000/- together with interest at 7.5% per annum from the date of filing of the petition till the date of deposit with costs.

3. It transpires from the Award that the Claims Tribunal had awarded a sum of Rs.20,00,000/- to the 1st Respondent/1st Claimant and awarded a sum of Rs.5,00,000/- each to the 4th and 5th Respondents/ 3rd and 4th Respondents together with proportionate cost sand interest and awarded a sum of Rs.13,87,000/- to the 2nd Respondent/2nd Claimant (minor) along with proportionate costs and interest. Moreover, the Claims Tribunal, on such deposit being made had permitted the 1st Respondent/1st Claimant, 4th and 5th Respondents to withdraw 50% of the Award amount together with cost and interest. As a matter of fact, the Claims Tribunal had directed the remaining 50% of the award amount in respect of the First Claimant, Respondents 3 and 4/Respondents 1, 4 and 5 herein amount to be deposited in any one of the nationalised bank for the period of three years and till the date of minor claimants attaining majority.

4. Challenging the validity and legality of the Award passed by the Motor Accident Claims Tribunal (Special Sub Court), Tiruvannamalai dated 03.06.2014 in M.C.O.P.No.2 of 2014, the Appellant/Insurance Company had projected the present Civil Miscellaneous Appeal contending that the Award passed is against Law, Facts, Evidence on Record and Probabilities of the Case.

5. The Learned Counsel for the Appellant/Insurance Company urges before this Court that the total compensation of Rs.43,87,000/- awarded to respondents 1, 2, 4 and 5 is highly an excessive, exorbitant and un-sustainable one in the Eye of Law.

6. It is represented on behalf of the Appellant/Insurance Company that considering the requirement of Doctorate in Ph.D to hold the post Principal as per the Regulation of Director of Technical Education, the Claims Tribunal, ought not to have accepted the employment of the deceased that he worked as Principal.

7. The Learned Counsel for the Appellant/Insurance Company projects an argument that the Claims Tribunal in the absence of any previous employment records after passing B.Tech Graduation on 17.08.1999 and the employment pleaded as Principal only for the period from 20.01.2012 till 25.01.2012 for a short period without employment for 13 years should have held that the occupation and income of the deceased, as projected by the Respondent/Claimants was unacceptable.

8. The Learned Counsel for the Appellant takes a plea that the Tribunal should have disbelieved the appointment letter and salary certificate of the deceased, since the appointment should be made with the approval of the Director of Technical Education. The Learned Counsel for the Appellant / Insurance Company contends that in the absence of any 'Income Tax Deduction' (in Form 16A) from the salary of Rs.20,000/- to Rs.25,000/- reflected in any statement of account from a Bank, Service Register, Provident fund, gratuity ought to have rejected the occupation and income as false.

9. Yet another stand of the Appellant/Insurance Company is that the Claims Tribunal considering the calculation of the salary without basic pay including all the allowances and finally arrived at a monthly pay of Rs.20,000/- to Rs.25,000/-, should have held that the Pay and the Register are falsely fabricated.

10. Lastly, it is the plea of the Learned Counsel for the Appellant/Insurance Company that the compensation amount of Rs.43,87,000/- awarded by the Claims Tribunal is unrealistic against the Pleadings, Facts and Evidence of the Case.

11. In response, the Learned Counsel for the 1st and 2nd Respondents and 4th and 5th Respondents supported the Award passed by the Claims Tribunal and submits that the award does not require any interference at the hands of this Court sitting in Appellate Jurisdiction.

12. In the Claim Petition, the Respondents 1 and 2/ Claimants had averred that on 25.10.2012 the deceased Poongundran along with his friend Rajamanickam was standing opposite to Raman's house (situated near his house) at 7.45 P.M., in the direction of Gudiyatham and Palikonda road and at that time, the 3rd Respondent/1st Respondent had driven his auto rickshaw bearing Registration No.TN-23-AL-1942 in a rash and negligent manner and dashed against the parked two wheeler

bearing Registration No.TN-23-M-5227 and after proceeding further, dashed against the deceased Poongundran and his friend Rajamanickam before it capsized in the drainage.

13. It comes to be known that as a result of the accident, the deceased, Poongundran sustained injuries on his left chest, leg and head and further, he was taken to Government Hospital, Gudiyatham where he died. It is the case of the 1st and 2nd Respondents/1 and 2 Claimants that the accident had taken place due to rash and negligent driving of the auto rickshaw by the 3rd Respondent/1st Respondent and that the Pallikondapattu police had registered a case in Crime No.564 of 2012 under Sections 279, 337 and 304(A) of IPC. The Respondents 1 and 2/ Claimants had claimed a total sum of Rs.80,00,000/- as compensation. In the claim petition, the 4th/3rd Respondent and 5th / 4th Respondent are mentioned as living separately and further stated that they do not depend on the income of the deceased, Poongundran.

14. The Appellant /Insurance Company in its counter to the claim petition (filed by the 1st and 2nd Respondents/Claimants) had taken a plea that the auto driver was not responsible for the accident and that its liability is subject to availability of permit, Insurance Coverage, driving license and fitness certificate the auto in question. That apart, it was averred that the amount claimed was an excessive one.

15. The 4th and 5th Respondents (parents of the deceased) in their counter before the Tribunal had mentioned that they were depending on the deceased for their livelihood and that on 05.04.2002 their properties were partitioned between legal heirs and therefore, they do not own any property much less to have any income. Also that they are the legal heirs as per law and as such they are entitled to to be paid a sum of Rs.10,00,000/- each.

16. As regards the aspect of 'negligence', the Claims Tribunal by relying upon the evidence of P.W.1 (1st Respondent/1st Claimant) had come to a conclusion that the accident took place due to the rash and negligent driving of the auto by its driver. Apart from that the Claims Tribunal had taken note of the fact that in Crime No.564 of 2012 under Sections 279 and 337 of IPC, a criminal case was registered against the auto driver by the Pallikondapattu Police. Finally, the Tribunal came to the conclusion that the accident took place due to the rash and negligent driving of the auto bearing Registration No.TN 23-AL-1942 by its driver.

17. In the claim petition, the 1st and 2nd Respondents/Claimants had claimed a total compensation of Rs.80,00,000/- and the break-up figure under different heads is as follows:-

FIRST PART

Transport to Hospital and
Medical Expenses - Rs.5,00,000

Other expenses
(funeral expenses) - Rs. 50,000

SECOND PART

For Pain and suffering and
loss of life -Rs. 4,50,000

Loss of Earning Capacity
and Loss of Estate -Rs.70,00,000

-Rs.80,00,000

18. The Claims Tribunal had relied upon the Ex.P.6 and Ex.P.7 Mark sheets of 10th and 12th standard of the deceased in which, the date of birth of the deceased, Poongundran was mentioned as 02.01.1978. In the Claim Petition, the age of the deceased Poongundran was mentioned as 34. Ex.P.12, the Transfer Certificate issued in favour of the deceased by the Sathyabama University shows that the date of birth of the deceased as 02.01.1978. Therefore, it is held by this Court that the Tribunal came to the right conclusion in determining the age of the deceased, Poongundran as 34, at the time of accident.

19. It is the claim of the Respondents 1 and 2 that the deceased Poongundran was served as Principal in Sri Barathi Velu Polytechnic College, Sholinghur and in reality, Ex.P.4, Service certificate Ex.P.5 - Salary Certificate confirms the same. Even the Salary Register, Ex.P.16 and the Attendance Register Ex.P.17 were marked on the side of the 1st and 2nd Respondents/Claimants and P.W.2 (an official from the college) had deposed that the deceased was serving as Principal of Shri Bharathi Velu Polytechnic College, Sholinghur on a salary of Rs.25,000/- per month. The Tribunal had referred to the decision of the Hon'ble Supreme Court in Sarla Varma and Others V. Delhi Transport Corporation and another in 2009(2) TANMAC Vol.2 at Page 1 for the purpose of deduction relating to personal expenses and fixed the same as 1/4th since the deceased Poongundran had four Dependants. As such, the Tribunal from and out of the monthly salary

of Rs.25,000/- after deducting 1/4th towards personal expenses, arrived at a sum of Rs.18,700/-. From and out of income of Rs.18,700/-, the Tribunal had deducted 10% of the salary in respect of the income tax and arrived at a balance sum of Rs.16,875/- and took the said amount into consideration as the monthly contribution of the deceased to the family.

20. It cannot be disputed that the deceased Poongundran had a qualification of B.Tech in Chemical Engineering and Post Graduation Course in M.E., as evidenced by the certificate issued by the University of Madras. In fact, the Tribunal had recorded a finding that the deceased Poongundran had secured 5th Rank in his University in M.E. (Environmental Engineering). Further Ex.P.6 and P.7 pertains to 10th and 12th Mark sheet standing in the name of deceased, Poongundran. Ex.P.8 also relates to statement of Mark list issued in favour of deceased Poongundran while studying B.Tech Course. By virtue of the qualification acquired by the deceased Poongundran, the Tribunal opined that certainly, the deceased if he was alive would have attained a good position in life and relied upon the decision of the Hon'ble Supreme Court in Santhosh Devi V.National Insurance company Limited and others reported in 2012(2) TAN MAC Page 1, and for future prospects had determined 30% of the income of the deceased and accordingly it fixed the income as Rs.21,937/- (Rs.16,875/- (100%) +5,062(30%) = Rs.21,937/- = (130%)). For the age of the deceased as 34, the Tribunal adopted a multiplicand of '16' and calculated the loss of Dependency as Rs.42,11,904/- (Rs.21,937/- X12X16) and rounded of the amount to Rs.42,12,000/- and towards Loss of Consortium to the 1st Respondent/1st Claimant, the Tribunal awarded a sum of Rs.25,000/- and for future guidance to the minor 2nd Respondent/2nd Claimant had granted a sum of Rs.25,000/-. Towards the Loss of Love and Affection to the 1st and 2nd Respondents/Claimants and to the parents of the deceased, the Tribunal awarded a sum of Rs.25,000/- each, totalling all a sum of Rs.1,00,000/- under this head. For Funeral Expenses, Tribunal had awarded a sum of Rs.25,000/-. The amounts awarded under different heads and the calculations of the sum arrived at by the Tribunal is mentioned as under:-

Loss of Dependency (Rs.42,11,904/- which was rounded to Rs.42,12,000/-)	- Rs.42,12,000
Loss of consortium to the 1 st Respondent / 1 st Claimant (Wife)	- Rs. 25,000
Loss of future guidance to the minor 2 nd Respondent /2 nd claimant	- Rs. 25,000
Love and Affection (Rs.25,000X4)	- Rs. 1,00,000

Funeral Expenses	- Rs. 25,000

Total	- Rs.43,87,000

21. Resultantly, the Claims Tribunal determined the compensation amount of Rs.43,87,000/- for the death of the Poongundran and the Tribunal further directed the Appellant/3rd Respondent/1st Respondent, the Appellant / Insurance Company jointly and severally require to pay the compensation to the R1, R2, R4 and R5 together with interest at 7.5% annum from the date of petition till the date of deposit with costs.

22. At this juncture, this Court worth recall and recollects the decision of Hon'ble Supreme Court in (Oriental Insurance Company Limited V. Syed Ibrahim & Others) in CDJ 2007 SC 985 whereby and whereunder in Paragraph Nos.5 and 6, it is observed and held as follows:-

...5. In State of Haryana and Anr. V. Jasbir Kaur and Ors (2003(7) SCC 484)

"7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense " damages" which in turn appears to it to be " just and reasonable" . It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit; but the same should not be pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be ' just' compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances and attending peculiar or special features, if any. Every method of mode adopted for assessing compensation has to be considered in the background of 'just' compensation which is the pivotal consideration. Though by use of the expression " which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The

expression 'just' denotes equitability, fairness and reasonableness, and non arbitrary if it is not so it cannot be just. (See Helen C.Rebello V. Maharashtra SRTC (1999 (1) SCC 90)

6. There are some aspects of human life, which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendor of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and it becomes all the more baffling when the deceased is a child and / or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation. Therefore, becomes stiffer. The figure of compensation in such cases involves a good deal of guesswork. In cases where parents are claimants, relevant factor would be age of parents."

23. Also this Court relevantly cites the decision of B.H.Rangaiah V. H.R.V.Basavaraju and another reported in AIR 2000 Karnataka at Spl. Pages 324 and 325 wherein at Paragraph No. 2, it is observed and held as under:-

" 2. Mr.Satish Kumar, learned counsel for the appellant argued quite at length urging that the Tribunal has failed to award reasonable compensation for the inquiry sustained. I am of the view that it is a totally misconceived notion that in every accident case an appropriate, reasonable compensation should be awarded irrespective of the gravity of the injury. The compensation, should be the statute contemplates a "just" compensation and it is not a "reasonable" compensation as claimed. A "reasonable" compensation may vary from claimant to claimant and from counsel to counsel, whereas, "just" compensation is fixed with respect to the nature of injuries sustained....."

24. It is remembered that a Court of Law / Tribunal is to take utmost care to award full, fair and just compensation to the family of the deceased and it cannot be forgotten that only in a claim petition, on the right occasion, the compensation can be awarded in a fair, just and equitable manner. Of course, the compensation/damages awarded by a Claims Tribunal ought not to be a extravaganza or bonanza. At the same time, the compensation to be awarded / awarded ought not to be an excessive, arbitrary, capricious and extortionate one in the considered opinion of this Court.

25. Be that as it may, in the upshot of qualitative and quantitative discussions as mentioned supra and also this Court on going through the contents of the award dated 02.06.2014 in M.C.O.P.No.2 of 2014 passed by the Claims Tribunal, this Court comes to an irresistible conclusion that the total compensation of Rs.43,87,000/- (Inclusive of no fault liability) granted to the 1st and 2nd Respondents and 4th and 5th Respondents for the death of Poongundran, payable by the 3rd Respondent/1st Respondent and the Appellant / Insurance Company jointly and severally does not suffer from either material irregularities or patent illegalities in the Eye of Law.

26. Per contra the Award dated 02.06.2014 passed by the Claims Tribunal is a fair, just and legally tenable one. Consequently, Civil Miscellaneous Appeal fails.

27. In the result, the appeal is dismissed leaving the parties to bear their own costs. However, liberty is granted to the 1st Respondent/1st Claimant to withdraw her remaining sum of her share amount from the Claims Tribunal by filing necessary application under Civil Rules of Practice. Likewise, the 4th and 5th Respondents (Parents of the deceased) are at liberty to withdraw their share amounts lying to the credit of MCOP before the Claims Tribunal by filing necessary application in terms of Civil Rules of Practice. That apart, the 1st Respondent/1st Claimant (mother) is permitted by this Court to file necessary application for claiming the interest amount of the minor 2nd Respondent/2nd Claimant from the concerned nationalised bank directly once in three months periodically.

27. The award dated 02.06.2014 passed by the Special Sub Judge, Motor Accidents Claims Tribunal in M.C.O.P.No.02 of 2014 dated 03.06.2014 is affirmed by this Court for the reasons assigned in this Appeal. The Appellant/Insurance Company is granted one month for depositing the compensation amount so awarded (after deducting the amount so paid) (if not paid already) from the date of receipt of copy of the Judgment. Consequently, connected Miscellaneous Petitions are closed. No costs.
Ssd

Sd/-

Assistant Registrar (CS-VII)

/True Copy/

Sub-Assistant Registrar

To

The Motor Accidents Claims Tribunal
(Special Subordinate Judge),
Thiruvannamalai

+1 C.C. To MR.J.Chandran, Advocate in SR.NO.56541

+1 C.C. TO MR.N.Manokaran, Advocate in SR.NO.56271

+1 C.C. To MR.B.Jawahar, Advocate in SR.NO.56072

Pre-Delivery Judgment made in
C.M.A. No.1233 of 2015 and
M.P.Nos.1 to 3 of 2015

RSI (CO)
sd : 30/11/2015



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